

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ATWAQUE GILKEY,

Plaintiff,

v.

LA.P.D. (CITY OF LOS ANGELES
POLICE DEPARTMENT),
PAUL EVIETH, a government
employee; LAPD OFFICER NAME
UNKNOWN-I, a government
employee;
LAPD OFFICER NAME
UNKNOWN-2, a government
employee;
LAPD OFFICER NAME
UNKNOWN-3, a government
employee;

Defendants.

CASE NO. CV22-2817-MCS(RAO)
Honorable Mark C. Scarsi
Honorable Rozella A. Oliver

STIPULATED PROTECTIVE
ORDER¹

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¹ This Stipulated Protective Order is substantially based on the model protective order
provided under Magistrate Judge Rozella A. Oliver's Procedures.

1 1. **A. PURPOSES AND LIMITATIONS**

2 Discovery in this action is likely to involve production of confidential,
3 proprietary, or private information for which special protection from public disclosure
4 and from use for any purpose other than prosecuting this litigation may be warranted.
5 Accordingly, the parties hereby stipulate to and petition the Court to enter the
6 following Stipulated Protective Order. The parties acknowledge that this Order does
7 not confer blanket protections on all disclosures or responses to discovery and that the
8 protection it affords from public disclosure and use extends only to the limited
9 information or items that are entitled to confidential treatment under the applicable
10 legal principles. The parties further acknowledge, as set forth in Section XIII(C),
11 below, that this Stipulated Protective Order does not entitle them to file confidential
12 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be
13 followed and the standards that will be applied when a party seeks permission from
14 the Court to file material under seal.

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16 **B. GOOD CAUSE STATEMENT**

17 This action involves Officer Evieth and City of Los Angeles (“Defendants”).
18 Plaintiff is seeking materials and information that Defendants maintain as
19 confidential, such as Internal Affairs materials and information, video recordings,
20 audio recordings, and information, personnel records and other administrative
21 materials and information currently in the possession of Defendants which may be
22 entitled to special protection from public disclosure and from use for any purpose
23 other than prosecuting this litigation. Additionally, discovery may include sensitive
24 confidential financial and business information, which may require heightened
25 protection from public disclosure and from use for any purpose other than prosecuting
26 this litigation. Accordingly, to expedite the flow of information, to facilitate the
27 prompt resolution of disputes over confidentiality of discovery materials, to
28 adequately protect information the parties are entitled to keep confidential, to ensure

1 that the parties are permitted reasonable necessary uses of such material in
2 preparation for and in the conduct of trial, to address their handling at the end of the
3 litigation, and serve the ends of justice, a protective order for such information is
4 justified in this matter. It is the intent of the parties that information will not be
5 designated as confidential for tactical reasons and that nothing be so designated
6 without a good faith belief that it has been maintained in a confidential, non-public
7 manner, and there is good cause why it should not be part of the public record of this
8 case. This also includes (1) any information copied or extracted from the Confidential
9 information; (2) copies, excerpts, summaries or compilations of Confidential
10 information; and (3) any testimony, conversations, or presentations that are
11 reasonably likely to reveal Confidential information.

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13 **C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER SEAL**

14 The parties further acknowledge, as set forth in Section 12.3, below, that this
15 Stipulated Protective Order does not entitle them to file confidential information
16 under seal; Local Civil Rule 79-5 sets forth the procedures that must be followed and
17 the standards that will be applied when a party seeks permission from the court to file
18 material under seal.

19 There is a strong presumption that the public has a right of access to judicial
20 proceedings and records in civil cases. In connection with non-dispositive motions,
21 good cause must be shown to support a filing under seal. *See Kamakana v. City and*
County of Honolulu, 447 F.3d 1172, 1176 (9th Cir. 2006); *Phillips v. Gen. Motors*
Corp., 307 F.3d 1206, 1210-11 (9th Cir. 2002); *Makar-Welbon v. Sony Electrics, Inc.*,
22 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective orders require good
23 cause showing), and a specific showing of good cause or compelling reasons with
24 proper evidentiary support and legal justification, must be made with respect to
25 Protected Material that a party seeks to file under seal. The parties' mere designation
26 of Disclosure or Discovery Material as CONFIDENTIAL does not—without the
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1 submission of competent evidence by declaration, establishing that the material
2 sought to be filed under seal qualifies as confidential, privileged, or otherwise
3 protectable—constitute good cause.

4 Further, if a party requests sealing related to a dispositive motion or trial, then
5 compelling reasons, not only good cause, for the sealing must be shown, and the relief
6 sought shall be narrowly tailored to serve the specific interest to be protected. *See*
7 *Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 677-79 (9th Cir. 2010). For each
8 item or type of information, document, or thing sought to be filed or introduced under
9 seal in connection with a dispositive motion or trial, the party seeking protection must
10 articulate compelling reasons, supported by specific facts and legal justification, for
11 the requested sealing order. Again, competent evidence supporting the application to
12 file documents under seal must be provided by declaration.

13 Any document that is not confidential, privileged, or otherwise protectable in
14 its entirety will not be filed under seal if the confidential portions can be redacted. If
15 documents can be redacted, then a redacted version for public viewing, omitting only
16 the confidential, privileged, or otherwise protectable portions of the document shall be
17 filed. Any application that seeks to file documents under seal in their entirety should
18 include an explanation of why redaction is not feasible.

19
20 2. DEFINITIONS

21 2.1 Action: this pending federal lawsuit.

22 2.2 Challenging Party: A Party or Non-Party that challenges the designation
23 of information or items under this Order.

24 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
25 how it is generated, stored or maintained) or tangible things that qualify for protection
26 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good
27 Cause Statement. This also includes (1) any information copied or extracted from the
28 Confidential information; (2) copies, excerpts, summaries or compilations of

1 Confidential information; and (3) any testimony, conversations, or presentations that
2 are reasonably likely to reveal Confidential information. References to
3 “CONFIDENTIAL” information or items in this Protective Order shall also include
4 information or items designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
5 EYES ONLY,” unless stated otherwise.

6 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
7 their support staff).

8 2.5 Designating Party: A Party or Non-Party that designates information or
9 items that it produces in disclosures or in responses to discovery as
10 “CONFIDENTIAL.”

11 2.6 Disclosure or Discovery Material: All items or information, regardless
12 of the medium or manner in which it is generated, stored, or maintained (including,
13 among other things, testimony, transcripts, and tangible things), that are produced or
14 generated in disclosures or responses to discovery in this matter.

15 2.7 Expert: a person with specialized knowledge or experience in a matter
16 pertinent to the litigation who has been retained by a Party or its counsel to serve as
17 an expert witness or as a consultant in this Action.

18 2.8 House Counsel: attorneys who are employees of a party to this Action.
19 House Counsel does not include Outside Counsel of Record or any other outside
20 counsel.

21 2.9 Non-Party: any natural person, partnership, corporation, association or
22 other legal entity not named as a Party to this action.

23 2.10 Outside Counsel of Record: attorneys who are not employees of a party
24 to this Action but are retained to represent or advise a party to this Action and have
25 appeared in this Action on behalf of that party or are affiliated with a law firm that has
26 appeared on behalf of that party, and includes support staff.

27 2.11 Party: any party to this Action, including all of its officers, directors,
28 employees, consultants, retained experts, and Outside Counsel of Record (and their

1 support staffs).

2 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
3 Discovery Material in this Action.

4 2.13 Professional Vendors: persons or entities that provide litigation support
5 services (e.g., photocopying, videotaping, translating, preparing exhibits or
6 demonstrations, and organizing, storing, or retrieving data in any form or medium)
7 and their employees and subcontractors.

8 2.14 Protected Material: Any Disclosure or Discovery Material that is
9 designated as “CONFIDENTIAL.”

10 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
11 from a Producing Party.

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13 3. SCOPE

14 The protections conferred by this Stipulation and Order cover not only
15 Protected Material (as defined above), but also (1) any information copied or
16 extracted from Protected Material; (2) all copies, excerpts, summaries, or
17 compilations of Protected Material; and (3) any testimony, conversations, or
18 presentations by Parties or their Counsel that might reveal Protected Material.

19 Any use of Protected Material at trial shall be governed by the orders of the
20 trial judge. This Order does not govern the use of Protected Material at trial.

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22 4. DURATION

23 FINAL DISPOSITION of the action is defined as the conclusion of any
24 appellate proceedings, or, if no appeal is taken, when the time for filing of an appeal
25 has run. Except as set forth below, the terms of this protective order apply through
26 FINAL DISPOSITION of the action. The parties may stipulate that they will be
27 contractually bound by the terms of this agreement beyond FINAL DISPOSITION,

1 but will have to file a separate action for enforcement of the agreement once all
2 proceedings in this case are complete.

3 Once a case proceeds to trial, information that was designated as confidential or
4 maintained pursuant to this protective order used or introduced as an exhibit at trial
5 becomes public and will be presumptively available to all members of the public,
6 including the press, unless compelling reasons supported by specific factual findings
7 to proceed otherwise are made to the trial judge in advance of the trial. *See*
8 *Kamakana*, 447 f.3d at 1180-81 (distinguishing “good cause” showing for sealing
9 documents produced in discovery from “compelling reasons” standard when merits-
10 related documents are part of court record). Accordingly, for such materials, the
11 terms of this protective order do not extend beyond the commencement of the trial.
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16 5. DESIGNATING PROTECTED MATERIAL

17 5.1 Exercise of Restraint and Care in Designating Material for Protection.
18 Each Party or Non-Party that designates information or items for protection under this
19 Order must take care to limit any such designation to specific material that qualifies
20 under the appropriate standards. The Designating Party must designate for protection
21 only those parts of material, documents, items or oral or written communications that
22 qualify so that other portions of the material, documents, items or communications for
23 which protection is not warranted are not swept unjustifiably within the ambit of this
24 Order.

25 Mass, indiscriminate or routinized designations are prohibited. Designations
26 that are shown to be clearly unjustified or that have been made for an improper
27 purpose (e.g., to unnecessarily encumber the case development process or to impose
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1 unnecessary expenses and burdens on other parties) may expose the Designating Party
2 to sanctions.

3 If it comes to a Designating Party's attention that information or items that it
4 designated for protection do not qualify for protection, that Designating Party must
5 promptly notify all other Parties that it is withdrawing the inapplicable designation.

6 **5.2 Manner and Timing of Designations.** Except as otherwise provided in
7 this Order (*see, e.g.*, second paragraph of section 5.2(a) below), or as otherwise
8 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
9 under this Order must be clearly so designated before the material is disclosed or
10 produced.

11 Designation in conformity with this Order requires:

12 (a) for information in documentary form (*e.g.*, paper or electronic
13 documents, but excluding transcripts of depositions or other pretrial or trial
14 proceedings), that the Producing Party affix at a minimum, the legend
15 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that
16 contains protected material. If only a portion of the material on a page qualifies for
17 protection, the Producing Party also must clearly identify the protected portion(s)
18 (*e.g.*, by making appropriate markings in the margins).

19 A Party or Non-Party that makes original documents available for inspection
20 need not designate them for protection until after the inspecting Party has indicated
21 which documents it would like copied and produced. During the inspection and
22 before the designation, all of the material made available for inspection shall be
23 deemed “CONFIDENTIAL.” After the inspecting Party has identified the documents
24 it wants copied and produced, the Producing Party must determine which documents,
25 or portions thereof, qualify for protection under this Order. Then, before producing
26 the specified documents, the Producing Party must affix the “CONFIDENTIAL
27 legend” to each page that contains Protected Material. If only a portion of the
28 material on a page qualifies for protection, the Producing Party also must clearly

1 identify the protected portion(s) (e.g., by making appropriate markings in the
2 margins).

3 (b) for testimony given in depositions that the Designating Party identifies
4 the Disclosure or Discovery Material on the record, before the close of the deposition
5 all protected testimony.

6 (c) for information produced in some form other than documentary and for
7 any other tangible items, that the Producing Party affix in a prominent place on the
8 exterior of the container or containers in which the information is stored the legend
9 “CONFIDENTIAL.” If only a portion or portions of the information warrants
10 protection, the Producing Party, to the extent practicable, shall identify the protected
11 portion(s).

12 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
13 failure to designate qualified information or items does not, standing alone, waive the
14 Designating Party’s right to secure protection under this Order for such material.
15 Upon timely correction of a designation, the Receiving Party must make reasonable
16 efforts to assure that the material is treated in accordance with the provisions of this
17 Order.

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19 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

20 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
21 designation of confidentiality at any time that is consistent with the Court’s
22 Scheduling Order.

23 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
24 resolution process under Local Rule 37.1 et seq.

25 6.3 The burden of persuasion in any such challenge proceeding shall be on
26 the Designating Party. Frivolous challenges, and those made for an improper purpose
27 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
28 expose the Challenging Party to sanctions. Unless the Designating Party has waived

1 or withdrawn the confidentiality designation, all parties shall continue to afford the
2 material in question the level of protection to which it is entitled under the Producing
3 Party's designation until the Court rules on the challenge.

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5 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

6 **7.1 Basic Principles.** A Receiving Party may use Protected Material that is
7 disclosed or produced by another Party or by a Non-Party in connection with this
8 Action only for prosecuting, defending or attempting to settle this Action. Such
9 Protected Material may be disclosed only to the categories of persons and under the
10 conditions described in this Order. When the Action has been terminated, a
11 Receiving Party must comply with the provisions of section 13 below (FINAL
12 DISPOSITION).

13 Protected Material must be stored and maintained by a Receiving Party at a
14 location and in a secure manner that ensures that access is limited to the persons
15 authorized under this Order.

16 **7.2 Disclosure of “CONFIDENTIAL” Information or Items.** Unless
17 otherwise ordered by the court or permitted in writing by the Designating Party, a
18 Receiving Party may disclose any information or item designated
19 “CONFIDENTIAL” only to:

20 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well
21 as employees of said Outside Counsel of Record to whom it is reasonably necessary
22 to disclose the information for this Action;

23 (b) the officers, directors, and employees (including House Counsel) of the
24 Receiving Party to whom disclosure is reasonably necessary for this Action;

25 (c) Experts (as defined in this Order) of the Receiving Party to whom
26 disclosure is reasonably necessary for this Action and who have signed the
27 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

28 (d) the court and its personnel;

(e) court reporters and their staff;

(f) professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

(h) during their depositions, witnesses, and attorneys for witnesses, in the Action to whom disclosure is reasonably necessary provided: (1) the deposing party requests that the witness sign the form attached as Exhibit A hereto; and (2) they will not be permitted to keep any confidential information unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

(i) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of

1 this Stipulated Protective Order; and

2 (c) cooperate with respect to all reasonable procedures sought to be pursued
3 by the Designating Party whose Protected Material may be affected.

4 If the Designating Party timely seeks a protective order, the Party served with
5 the subpoena or court order shall not produce any information designated in this
6 action as “CONFIDENTIAL” before a determination by the court from which the
7 subpoena or order issued, unless the Party has obtained the Designating Party’s
8 permission. The Designating Party shall bear the burden and expense of seeking
9 protection in that court of its confidential material and nothing in these provisions
10 should be construed as authorizing or encouraging a Receiving Party in this Action to
11 disobey a lawful directive from another court.

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13 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
14 PRODUCED IN THIS LITIGATION

15 (a) The terms of this Order are applicable to information produced by a
16 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
17 produced by Non-Parties in connection with this litigation is protected by the
18 remedies and relief provided by this Order. Nothing in these provisions should be
19 construed as prohibiting a Non-Party from seeking additional protections.

20 (b) In the event that a Party is required, by a valid discovery request, to
21 produce a Non-Party’s confidential information in its possession, and the Party is
22 subject to an agreement with the Non-Party not to produce the Non-Party’s
23 confidential information, then the Party shall:

24 (1) promptly notify in writing the Requesting Party and the Non-Party
25 that some or all of the information requested is subject to a confidentiality agreement
26 with a Non-Party;

27 (2) promptly provide the Non-Party with a copy of the Stipulated
28 Protective Order in this Action, the relevant discovery request(s), and a reasonably

1 specific description of the information requested; and

2 (3) make the information requested available for inspection by the Non-
3 Party, if requested.

4 (c) If the Non-Party fails to seek a protective order from this court within
5 14 days of receiving the notice and accompanying information, the Receiving Party
6 may produce the Non-Party's confidential information responsive to the discovery
7 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
8 not produce any information in its possession or control that is subject to the
9 confidentiality agreement with the Non-Party before a determination by the court.
10 Absent a court order to the contrary, the Non-Party shall bear the burden and expense
11 of seeking protection in this court of its Protected Material.

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13 10. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

14 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
15 Protected Material to any person or in any circumstance not authorized under this
16 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
17 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
18 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
19 persons to whom unauthorized disclosures were made of all the terms of this Order,
20 and (d) request such person or persons to execute the "Acknowledgment and
21 Agreement to Be Bound" that is attached hereto as Exhibit A.

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23 11. **INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
24 **PROTECTED MATERIAL**

25 When a Producing Party gives notice to Receiving Parties that certain
26 inadvertently produced material is subject to a claim of privilege or other protection,
27 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
28 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure

1 may be established in an e-discovery order that provides for production without prior
2 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
3 parties reach an agreement on the effect of disclosure of a communication or
4 information covered by the attorney-client privilege or work product protection, the
5 parties may incorporate their agreement in the stipulated protective order submitted to
6 the court.

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8 12. MISCELLANEOUS

9 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
10 person to seek its modification by the Court in the future.

11 12.2 Right to Assert Other Objections. By stipulating to the entry of this
12 Protective Order, no Party waives any right it otherwise would have to object to
13 disclosing or producing any information or item on any ground not addressed in this
14 Stipulated Protective Order. Similarly, no Party waives any right to object on any
15 ground to use in evidence of any of the material covered by this Protective Order.

16 12.3 Filing Protected Material. A Party that seeks to file under seal any
17 Protected Material must comply with Local Civil Rule 79-5. Protected Material may
18 only be filed under seal pursuant to a court order authorizing the sealing of the
19 specific Protected Material at issue. If a Party's request to file Protected Material
20 under seal is denied by the court, then the Receiving Party may file the information in
21 the public record unless otherwise instructed by the court.

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23 13. FINAL DISPOSITION

24 After the final disposition of this Action, as defined in paragraph 4, within 60
25 days of a written request by the Designating Party, each Receiving Party must return
26 all Protected Material to the Producing Party or destroy such material. As used in this
27 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
28 summaries, and any other format reproducing or capturing any of the Protected

1 Material. Whether the Protected Material is returned or destroyed, the Receiving
2 Party must submit a written certification to the Producing Party (and, if not the same
3 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
4 (by category, where appropriate) all the Protected Material that was returned or
5 destroyed and (2) affirms that the Receiving Party has not retained any copies,
6 abstracts, compilations, summaries or any other format reproducing or capturing any
7 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
8 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
9 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
10 reports, attorney work product, and consultant and expert work product, even if such
11 materials contain Protected Material. Any such archival copies that contain or
12 constitute Protected Material remain subject to this Protective Order as set forth in
13 Section 4 (DURATION).

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14. VIOLATION

Any violation of this Order may be punished by appropriate measures including, without limitation, contempt proceedings and/or monetary sanctions.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: October 5, 2023

/S/
JAMES M. SIMMONS, Attorney
for Plaintiff, ATWAQUE GILKEY

DATED: October 5, 2023

/S/
DORDANEH GHAEMI, Deputy City Attorney
Attorneys for Defendants, CITY OF LOS
ANGELES and PAUL EVIETH

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

DATED: October 6, 2023

HONORABLE ROZELLA A. OLIVER
UNITED STATES MAGISTRATE JUDGE

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____, [print or type full address], declare under penalty of perjury that
I have read in its entirety and understand the Stipulated Protective Order that was
issued by the United States District Court for the Central District of California on
[date] in the case of _____ **[insert formal name of the case and the number
and initials assigned to it by the court]**. I agree to comply with and to be bound by
all the terms of this Stipulated Protective Order and I understand and acknowledge
that failure to so comply could expose me to sanctions and punishment in the nature
of contempt. I solemnly promise that I will not disclose in any manner any
information or item that is subject to this Stipulated Protective Order to any person or
entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action. I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date:

City and State where sworn and signed:

Printed name:

Signature: